

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of Title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the Western District of Michigan adopt this Plan (the Plan) for furnishing representation in federal court for any person financially unable to obtain adequate representation, in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA; 18 U.S.C. § 3005; the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of Title 21, United States Code); the Antiterrorism and Effective Death Penalty Act of 1996; and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance

1. The Court, its clerk, the Federal Public Defender Organization, and all attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. “Each private attorney shall upon first assuming duties under the Criminal Justice Act obtain and familiarize himself or herself with a then current copy of this Plan. The clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability. Failure to receive a copy of this Plan shall not excuse an attorney from complying with its provisions.”

III. DEFINITIONS

- A. “Representation” includes counsel and necessary investigative, expert, and other services.
- B. “Appointed attorney” includes private attorneys, the Federal Public Defender and staff attorneys of the Federal Public Defender Organization, and attorneys of any other public defender organization who are appointed to serve in this district.

IV. APPOINTMENT OF COUNSEL

- A. When Counsel Shall Be Provided. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or district judge, when they are formally charged or notified of charges if formal charges are sealed, or when a district judge or magistrate judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment.
- B. Selection of Counsel. All counsel furnishing representation under the Plan shall be appointed by the Court. Except as provided in Subsection C, counsel shall be appointed from the CJA Panel or from the district’s Federal Public Defender Organization. In assigning counsel in capital cases, the Court shall consider the recommendation of the Federal Public Defender Organization.
- C. Pro Hac Vice Appointments. When the district judge or magistrate judge presiding over the case determines that the appointment of an attorney, who is not a member of the CJA Panel or the Federal Public Defender Organization, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the district’s CJA Panel in the ordinary course of panel selection.

- D. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. “Substantial” shall usually be defined as at least 25% of the appointments under the CJA annually throughout the district.
- E. Investigative, Expert and Other Necessary Services. Investigative, expert or other services reasonably necessary to adequate representation, as authorized by the CJA, shall be available as provided by statute to persons who are eligible for representation under the CJA, including eligible persons who have elected to proceed *pro se* and persons who have retained counsel but who are found by the court to be financially unable to obtain the necessary services.

V. PROVISION OF REPRESENTATION

A. Circumstance.

- 1. Mandatory. Representation shall be provided for any financially eligible person who does not waive such representation and who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of Title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of Title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28, United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of Title 18, United States Code;

- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a district judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence, under sections 2241, 2254, 2255 of Title 28, United States Code;
 - c. is charged with civil or criminal contempt and who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agent or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. is proposed by the United States attorney for processing under a pretrial diversion program;
 - f. is held for international extradition under chapter 209 of Title 18, United States Code.
 - g. is involved in “ancillary matters appropriate to the proceedings” pursuant to subsection (c) of the CJA. In determining whether representation in an ancillary matter is appropriate to the proceedings, the court should consider whether such representation is reasonably necessary to accomplish, *inter alia*, one of the following objectives:
 - (1) to protect a Constitutional right;
 - (2) to contribute in some significant way to the defense of the principal criminal charge;
 - (3) to aid in preparation for the trial or disposition of the principal criminal charge;
 - (4) to enforce the terms of a plea agreement in the principal criminal charge;
 - (5) to preserve the claim of the CJA client to an interest in real or

personal property subject to a civil forfeiture proceeding pursuant to 21 U.S.C. § 88, 19 U.S.C. § 1602 or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act; or

- (7) to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property pursuant to Fed. R. Crim. P. 41(e), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the CJA.

B. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, two or more attorneys may be appointed as required by statute.
2. Qualifications. In capital cases, at least one of the attorneys appointed shall be learned in the law applicable to such cases. Except as provided by section 848(q)(7) of Title 21, United States Code, at least one attorney appointed in a capital case shall meet the qualification requirements set forth in sections 828(q)(5) and (6) of Title 21, United States Code. Pursuant to section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under sections 848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

C. Eligibility for Representation

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a district judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

VI. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment.

1. The Federal Public Defender Organization of the Western District of Michigan, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.
2. The Federal Public Defender Organization shall be capable of providing legal services in the Southern Division of the district and in the Northern Division, when deemed appropriate by the court after consultation with the Federal Public Defender, and shall maintain an office in Grand Rapids, Michigan.

B. Supervision of Defender Organization. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization, and these cases may be subsequently reassigned to staff attorneys at the discretion of the Federal Public Defender. Not later than January 31 of each year the Federal Public Defender Organization shall provide the Court with a list of all defendants assigned to that office during the preceding calendar year, along with such related information which will assist the Court in reviewing the distribution of case assignments between the Federal Public Defender Organization and the CJA Panel.

VII. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The previously established CJA panel of private attorneys (CJA panel) is hereby recognized.

1. Determination of Membership. The court shall designate and approve attorneys for membership on the panel after receiving recommendations from its Committee on the Criminal Justice Act. Members of the CJA Panel shall serve at the pleasure of the Court.
2. Size. The CJA Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the federal criminal statutes, the Federal Rules of

Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines, and shall have had criminal trial experience.

4. Removal From The Panel.
 - a. Automatic Removal; Reinstatement. Any attorney whose license is revoked or suspended by the Michigan Attorney Discipline Board or for any other reason is no longer a member in good standing of the State Bar of Michigan or of the Bar of this Court, shall be removed automatically from the CJA Panel. Upon reinstatement to membership in good standing in the State Bar of Michigan and the Bar of this Court, an attorney who desires to be reinstated to the CJA Panel shall proceed as on original application.
 - b. Other Removal; Reinstatement. In the event that a district judge or magistrate judge considers that an attorney should be removed from the CJA Panel for reasons other than bar membership status including, but not limited to, formal accusation of a crime, conviction of a crime not resulting in action by the Attorney Discipline Board, indications of lack of professional competence or lack of adherence to ethical standards, indications of mental or emotional instability affecting professional responsibilities, and indications of a lack of desire to accept or handle case assignments, referral of the matter shall be made to the Criminal Justice Act Committee. Upon consideration of the committee's report, the Court may remove the attorney from the CJA Panel, either permanently or for a period of time. Prior to making its determinations, the Court may, within its sole discretion, give the attorney written notice of its intended action and may also afford the attorney an opportunity to be heard before a hearing panel designated by the Chief Judge, which panel shall then submit a report to the Court. Any attorney removed under this provision who desires to be reinstated to the CJA Panel shall proceed as on original application.
 - c. None of the foregoing removal provisions shall be construed to alter the principle stated in Section VII that all CJA panel attorneys serve at the pleasure of the Court.
5. Equal Opportunity. All qualified attorneys are encouraged to become members of the CJA Panel, without regard to race, color, religion, sex, age, national origin or disabling condition.
6. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court, and when completed, returned to that office.

- B. Panel Selection. It shall be the responsibility of the Court's Criminal Justice Act Committee to select the members of the CJA Panel.
1. Membership. The Committee shall be chaired by a district judge and, for the purposes of the plan, may include such additional district judges, magistrate judges, public defenders and private attorneys as the court shall from time to time determine.
 2. Duties.
 - a. The Criminal Justice Act Committee shall meet at least once a year to consider applications for the vacancies on the CJA Panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies. The Committee may in its discretion inquire periodically as to the continued availability and willingness of any panel member to accept appointments.
 - b. The Committee shall also review not less than annually the overall operation of the Plan, and recommend to the Court any changes it deems necessary or appropriate, and in particular shall review the operation and administration of the appointment process and panel management. The Committee shall advise the Court at least annually as to the distribution of cases between the Federal Public Defender Organization and the CJA Panel.
- C. Appointment of Panel Attorneys in Individual Cases. The Court shall maintain a current list of all attorneys included on the CJA Panel. Appointments from the CJA Panel shall normally be made by the magistrate judges for the Court. Appointments should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the availability of the attorneys, conflicts of interest, the nature and complexity of the case, an attorney's experience, and geographical considerations. It is intended that this procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.
- D. Compensation. Claims for compensation and/or reimbursement of expenses shall be submitted on the appropriate CJA forms to the office of the Clerk of the Court. That office shall review the claim form for mathematical and technical accuracy, and for conformity with the CJA Guidelines and, if correct, shall forward the claim form for the consideration of the magistrate judge or trial judge. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for

further processing.

XIII. DUTIES OF APPOINTED ATTORNEYS

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct including, but not limited to, standards for professional conduct adopted by the Court.
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

X. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender Organization which shall discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23). The financial affidavit shall be presented to a district judge or magistrate judge of this court at or prior to the initial appearance for determination of financial eligibility and appointment of counsel.
- B. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed

counsel, or to the defendant if the defendant is without counsel, to ensure that the defendant is in possession of such document at the initial appearance.

X. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.
- B. Supersession. This Plan supersedes all prior Criminal Justice Act Plans in this court.

XI. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the 6th Circuit.

ENTERED FOR THE COURT ON _____ 1998.

Richard Alan Enslin
Chief Judge
United States District Court for the Western District of Michigan

APPROVED BY THE JUDICIAL COUNCIL OF THE 6TH CIRCUIT
ON _____ 1998.

Boyce F. Martin, Jr.
Chief Judge
Sixth Circuit, United States Court of Appeals